IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1245 of 1993

Rukmani Amma .. Appellant

-Vs-

1. P.Devaki Amma
2. C.H.Balakrishnan .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.4 of 1987 dated 1.9.1993 on the file of the Court of the District Judge, Nilgiris at Uthagamandalam confirming the judgment and decree made in O.S. No.9 of 1983 dated 17.12.1986 on the file of the Court of the District Munsif, Gudalur.

!For Appellant : Mr.S.V.Jayaraman,
Senior Counsel
for Mr.T.Murugamanikkam

^For Respondents : Mr.T.R.Rajaraman for R1

R2 no appearance

:JUDGMENT

Aggrieved over the judgment of the learned District Judge, Nilgiris, made in A.S.No.4 of 1987, affirming the judgment of the trial Court, which granted a decree for declaration, the second defendant has brought forth this second appeal.
2. The first respondent/plaintiff sought for the declaratory relief that the deceased first defendant was only having life interest under the Will dated 19.3.1962, executed by late Chathu Nair and for a consequential permanent injunction restraining the defendant from alienating the suit properties to any person. It is averred in the plaint as follows:
The plaintiff was the daughter of Chathu Nair, while the first defendant was his wife. The second and third defendants are the daughter and son of Chathu Nair respectively. The properties described in the plaint Schedule belonged to Chathu Nair. He executed a Will on 19.3 .1962, a registered one. He owned the properties other than the properties mentioned in the plaint Schedule. As per the said Will, the first defendant had the life interest over the plaint Schedule properties, which are mentioned in the Will. After the life interest of the deceased first defendant, the properties

should devolve on the plaintiff, and after her, it should go to her children. The first defendant was old, and she was making preparations at the instigation of the defendants 2 and 3 to sell the same. The first defendant was negotiating in that regard. In such circumstances, it became necessary to declare that the first defendant was entitled to the life interest only, and hence, the suit.

3. The suit was resisted by the defendants, stating that Chathu Nair executed a Will on 20.3.1962; that by a registered sale deed dated 2 8.12.1960, the said Chathu Nair and the defendants 1 and 3 sold the properties to Leelabai, the wife of Mothilal, and thus, on the date of the death of Chathu Nair, he has not left any property under the Will; that apart from that, by a registered sale deed dated 22.6.1975, the first defendant alone purchased the properties from Leelabai, and as such, she became the absolute owner of the properties; that the plaintiff cannot claim any right under the Will, and hence, the claim of the plaintiff was to be denied.

4. The trial Court framed the necessary issues, tried the suit and granted the relief, which on appeal was affirmed by the first appellate Court in the first appeal referred to above. Aggrieved second defendant has brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Whether the judgments of the Courts below are vitiated in that they have entertained a suit when the Settlement Tahsildar constituted under the Gudalur Jenmam Estates Abolition and Conversion into Ryotwari Act, Act 24 of 1969, has granted a patta in favour of Puttrachiammal?

(2) Whether the judgments of the Courts below are vitiated in that they failed to see that once when the suit properties were disposed of under the document dated 28.12.1962 (Ex.A27) by Chathu Nair, automatically those properties stood deleted in the Will executed by Chathur Nair in March, 1962?

6. After hearing the rival submissions made and scrutinising the materials, this Court is unable to notice any merit in this appeal.

7. As could be seen in the plaint, the plaintiff sought for a declaration that the deceased first defendant was only having the life interest under the Will executed by Chathu Nair on 19.3.1962. It is not in controversy that the said Chathu Nair executed a Will on 19.3.1962 , a registered one, wherein a life interest has been given in favour of the first defendant, his wife, and hence, there cannot be any impediment for granting the relief, if the defence put forth by the defendants before the Courts below was to be rejected as one without merits. What was all contended by the defendants before the lower Courts was that all the three items of properties were sold by Chathu Nair and the defendants 1 and 3 to one Leelabai, the wife of Mothilal, by a registered sale deed dated 28.12.1962; but, the Will was executed on 20.3.1962; that though the Will came into existence earlier before the death of Chathu Nair on 18.3.1970, a sale deed was executed by all the three including Chathu Nair, in favour of Leelabai, and thus, on the date of death of Chathu Nair, there was no property available to come to the hands of the plaintiff or any party over the matter. Both the Courts below, on evidence, have pointed out that only 6 cents of land in Survey Nos.302/1 and 402/3 were sold under the said sale deed, and thus, what was conveyed to Leelabai, the wife of Mothilal, was only 6 cents of lands, which originally belonged to Chathu Nair. and the remaining properties found in the Will, were

very well available. Now, at the time of the arguments in the second appeal, it was contended by the learned Counsel for the appellant that originally the properties were purchased by Chathu Nair, his wife the first defendant and Balakrishnan the third defendant in the year 1961, and thus, all the three owned the properties, and hence, Chathu Nair could not execute a Will in respect of the property under the Will. This contention has got to be rejected outright, since nowhere it is stated in the written statement that the properties were either purchased by all the three or owned by all of them. As rightly pointed out by the learned Counsel for the first respondent/plaintiff, the first and third defendants applied for grant of patta and that too in the name of Chathu Nair, who was the owner of the property, and obtained the patta also, and the defendants had also made mention of the same in the written statement. Having done so, now the appellant cannot be permitted to say that it was a joint purchase; that all of them owned the properties; and that Chathu Nair could not execute the Will as found under Ex.A1.

8. The next contention put forth by the appellant's side that the lower Courts without quantification of the property available at the time of the Will, have granted the relief cannot also be countenanced, since both the Courts below have clearly discussed the evidence and found that except the 6 cents of lands under the said two survey numbers, all the other properties, which belonged to Chathu Nair, were very well available at the time of execution of the Will, and they were also available on his death on 18.3.1970. Equally the last contention that was put forth by the appellant's side that the properties were repurchased by the first defendant out of her money from Leelabai, and hence, she became the owner of the properties absolutely has got to be rejected, for the simple reason that the property what was conveyed to Leelabai was only repurchased. But, as pointed out earlier, if at all any repurchase was made by the first defendant, it should have been only in respect of 6 cents and nothing more. Both the Courts below have made the proper interpretation of the Will that what was given to the first defendant thereunder was only the life interest, and on her death, the properties should devolve upon the children of the plaintiff. This interpretation does not require any interference by this Court, since it was rightly done by the lower Courts. Apart from the above, the lower Courts have given a concurrent finding on the factual position, which does not call for interference by this Court. On the legal position also, this Court is unable to disturb the findings recorded by the Courts below.

9. For the foregoing reasons, this second appeal deserves to be dismissed, and it is, accordingly, dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The District Judge
Nilgiris
2. The District Munsif
Gudalur

3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/